



November 18, 2002

Ms. Margaret A. Roll
Assistant General Counsel
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2002-6568

Dear Ms. Roll:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172431.

The Texas Department of Human Services (the "DHS") received a request for four categories of information pertaining to JPN RC-115-02-108. You state that you are releasing most of the requested information. You claim that highlighted portions of the information responsive to category 1, which consists of all job applications submitted for JPN RC-115-02-108, are excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must first address the procedural requirements of the Public Information Act. As you acknowledge, the DHS failed to raise its section 552.130 assertion within the ten business day period required in section 552.301 of the Government Code. Subsection 552.301(b) provides:]

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You state that you received the request on August 28, 2002. However, you did not raise section 552.130 until September 19, 2002. Consequently, you failed to raise section 552.130 within the ten business day period mandated by section 552.301(b) of the Government Code. Because your arguments under section 552.130 were not timely raised, the information you

state is subject to section 552.130 is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision No. 630 (1994). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. As section 552.130 protects the interests of third parties, we will consider your arguments under section 552.130.

Section 552.130 of the Government code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

The submitted information contains Texas driver's license numbers and information as to whether individuals have commercial driver's licenses. You must withhold the Texas driver's license numbers and information as to whether individuals have commercial driver's licenses you have highlighted pursuant to section 552.130.

You also assert that the information you have highlighted is excepted from release pursuant to section 552.117(1) of the Government Code. Section 552.117 excepts from disclosure the home addresses, home telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). You state that you have highlighted the information protected by section 552.117(1) of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, we find that you must withhold the home addresses, home telephone numbers, social security numbers, and family member information of current or former employees you have highlighted, in addition to the home phone number we have marked, pursuant to section 552.117.

You next assert that the submitted information contains e-mail addresses of members of the public, which you have highlighted, that are excepted from release pursuant to

section 552.137. Section 552.137 makes certain e-mail addresses confidential.¹ Section 552.137 provides:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code §552.137. You do not inform us that members of the public have affirmatively consented to the release of any e-mail address contained in the submitted materials. The DHS must, therefore, withhold the highlighted e-mail addresses of members of the public under section 552.137.

You also argue that some of the information you have highlighted is excepted from release under section 552.101 in conjunction with common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the common-law right to privacy. Information is protected under the common-law right to privacy when (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We have previously concluded that a sexual harassment victim has a common-law privacy interest that prevents disclosure of his or her identity. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, *writ denied*) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). You argue that some of the information that you have highlighted identifies the victim of harassment that "may have been sexual in nature" Upon review of the submitted information, however, we find no indication that the information you have highlighted does in fact relate to sexual harassment. Accordingly, you have not established the applicability of common-law privacy to the information you have highlighted that you allege may relate to sexual harassment. We further find that the remaining information you

¹House Bill 2589 also makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (codified at Gov't Code § 552.136). The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

have highlighted does not contain the sort of highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person. Accordingly, you may not withhold any of the highlighted information pursuant to section 552.101 in conjunction with common-law privacy.

Finally, we note that the submitted information contains social security numbers that you have not marked. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act. 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers included in the submitted information are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the DHS pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, you must withhold the Texas driver's license numbers and information as to whether individuals have commercial driver's licenses you have highlighted pursuant to section 552.130. You must withhold the highlighted home addresses, home telephone numbers, social security numbers, and family member information of current or former employees who timely elected under section 552.024, in addition to the home phone number we have marked, pursuant to section 552.117. You must withhold the highlighted e-mail addresses of members of the public under section 552.137. Finally, you may need to withhold the remaining social security numbers pursuant to the federal social security act. You must release the remaining responsive information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Maverick F. Fisher".

Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/seg

Ref: ID# 172431

Enc: Submitted documents

c: Mr. Michael A. Guffey
513 East McIntyre
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(w/o enclosures)